

# Understanding Sexual Violence

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## 1.1 Chapter Overview

This chapter is broken down into two main parts. The first part, Sections 1.2 to 1.4, briefly summarizes some of the research findings on the dynamics of sexual assault, sexual assault perpetrators, and sexual assault victims. It ends with a brief discussion on cross-cultural considerations that may arise in sexual assault cases. The second part, Sections 1.5 to 1.6, discusses various community resources available to victims of sexual assault, both on a statewide and local level, including the Michigan Domestic Violence Prevention and Treatment Board, the Michigan Coalition Against Domestic and Sexual Violence, the Michigan Resource Center on Domestic and Sexual Violence, and Sexual Assault Response Teams (SARTs).

## 1.2 Defining “Rape” and “Sexual Assault”

Rape and sexual assault are commonly used terms, but they are terms that are far from being commonly understood. In practice, the terms are variously defined and elude a singular, universally-accepted definition. Many sexual assault experts use the terms interchangeably and believe that they encompass a continuum of criminal sexual behavior, including forcible sexual penetration against (and between) females, forcible sexual penetration against (and between) males, non-forcible sexual assault against minors (and the physically helpless and the mentally incapacitated), sexual penetration of the vagina and anus with an object or body part other than the penis, marital rape, statutory rape, incest, fellatio, and anal intercourse. See generally Tracy,

\*See Section 2.5(J) for a definition of “intimate parts” as used under the CSC Act.

\*No Michigan statute specifically defines the term “rape.” However, one Michigan statute, in the context of communication privileges, defines “sexual assault” as an “assault with intent to commit criminal sexual conduct.” MCL 600.2157a(1)(c). See Section 7.15(A) for discussion of this statute and privilege.

Fromson & Else, *A Call to Change the UCR Definition of Rape*, 5 Sexual Assault Report 1 (September/October 2001), p 2.

Regarding this continuum of criminal sexual behavior, many sexual assault experts also believe that the terms rape and sexual assault encompass more than just sexual penetration, and include the sexual contact of another person’s intimate parts.\* Consistent with this view, one sexual assault expert recommends that, at least from a clinical point of view, rape should be defined as any form of *forcible sexual assault*, regardless of whether the sexual act involved sexual penetration:

“[I]t makes more sense to regard rape as *any* form of forcible sexual assault, whether the assailant intends to effect intercourse or some other type of sexual act. There is sufficient similarity in the factors underlying all types of forcible sexual assault—and in the impact such behavior has on the victim—so that they may be discussed meaningfully under the single term of *rape*. The defining element in rape is lack of consent. Although, typically, physical force or the threat of physical injury is envisioned in such assaults, the concept of rape can be expanded . . . .” Groth, *Why Men Rape* (Plenum Press, 1979), p 3.

## A. Rape and Sexual Assault Under Michigan Statutes

In Michigan, rape and sexual assault\* are generally punished through the Criminal Sexual Conduct Act (the “Act”), MCL 750.520a et seq. The scope of the Act encompasses, and thus criminalizes, a broad range of sexual misconduct. For instance, it encompasses criminal sexual conduct against both male and female victims, making it gender neutral. It encompasses criminal sexual conduct against the mentally disabled and the physically helpless. It encompasses marital rape. It encompasses criminal sexual conduct against a child, regardless of the child’s age (with graduated punishment levels based on age categories). It also encompasses and distinguishes criminal sexual conduct by the degree of force or coercion, as well as by any number of different “circumstances.” And, finally, it uses precisely defined terms, such as “sexual penetration” and “sexual contact.”

MCL 750.520a(m) defines “sexual penetration”:

“‘Sexual penetration’ means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.”

MCL 750.520a(l) defines “sexual contact”:

“‘Sexual contact’ includes the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

“(i) Revenge.

“(ii) To inflict humiliation.

“(iii) Out of anger.”

Under the CSC Act, a sexual penetration or sexual conduct, when present with at least one statutory “circumstance,” is punishable as criminal sexual conduct.

The Michigan Legislature also enacted other sex crimes, such as gross indecency, indecent exposure, sexual delinquency, and sexual intercourse involving AID/HIV, etc.\* However, these crimes do not punish what is normally understood to be rape or sexually assaultive behavior, even though the facts underlying such behavior may involve assaultive conduct. If the underlying facts involve assaultive conduct, that conduct may be punishable under the CSC Act as an assault with intent to commit sexual penetration, MCL 750.520g(1), as an assault with intent to commit CSC II, MCL 750.520g(2), or, depending upon the circumstances, as criminal sexual conduct under one or more of its four degrees.

For purposes of the Benchbook, the terms rape and sexual assault will be used interchangeably with criminal sexual conduct.

\*See Chapter 2 on the CSC Act.

\*See Chapter 3 for discussion of Michigan sex crimes outside of the CSC Act.

## B. Is Rape a Crime of Sex or Violence?

A common question regarding rape is whether it is a crime of sex or violence. According to the National Judicial Education Program’s *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault* (October 1994), Unit III, p 5, such a question presumes a false dichotomy since it does not specify from whose point of view the question should be answered—the rapist’s or the victim’s. The authors of the above publication referenced one sexual assault expert’s view of the answer, which is quoted more fully below:

“Rape is a violent act, but it also a sexual act, and it is this fact that differentiates it from other crimes. Further, it is illogical to argue, on the one hand, that rape is an extension of normative male sexual behavior and, on the other hand, that rape is not sexual. . . . [R]ape is not less sexual for being violent, nor is it necessarily true that the violent aspect of rape distinguishes it from legally ‘acceptable’ intercourse. . . . It is unfortunate that the rather swift public acceptance of the ‘rape as violence’ model, even among groups who otherwise discount feminist arguments, has unintended implications. . . . [E]mphasizing violence—the victim’s experience—is . . . strategic to the continued avoidance of an association between ‘normal’ men and sexual violence. Make no mistake, for some men, rape is sex—in fact, for them, sex is rape. The continued rejection of this possibility, threatening though it may be, is counterproductive to understanding the social causes of sexual violence.” Scully, *Understanding Sexual Violence* (Unwin Hyman, 1990), p 142-143.

\*This is the prevailing view and working framework in Michigan, according to many sexual assault experts and the Michigan Coalition Against Domestic and Sexual Violence.

\*Please note that the following list of terms is non-exhaustive.

\*“Nonstranger rape” and “acquaintance rape” are used interchangeably by sexual assault experts.

\*“Date rape” is a type of intimate partner rape. Although it is a commonly used term, “date rape” is disfavored by many sexual assault experts who instead prefer the term “intimate partner rape.” In their view, the latter term more accurately describes the prohibited acts.

Other sexual assault experts believe that rape is a pseudosexual act that serves primarily nonsexual needs.\* One such expert explained this as follows:

“[C]areful clinical study of offenders reveals that rape is in fact serving primarily nonsexual needs. It is the sexual expression of power and anger. Forcible sexual assault is motivated more by retaliatory and compensatory motives than by sexual ones. Rape is a pseudosexual act, complex and multidetermined, but addressing issues of hostility (anger) and control (power) more than passion (sexuality). To regard rape as an expression of sexual desire is not only an inaccurate notion but also an insidious assumption, for it results in the shifting of the responsibility for the offense in large part from the offender onto the victim: if the assailant is sexually aroused and is directing these impulses toward the victim, then it must be that she has deliberately or inadvertently stimulated or aroused this desire in him through her actions, style of dress, or some such feature. This erroneous but popular belief that rape is the result of sexual arousal and frustration creates the foundation for a whole superstructure of related misconceptions pertaining to the offender, the offense, and the victim.” Groth, *Men Who Rape: The Psychology of the Offender* (Plenum Press: NY, 1979), p 2. [Emphasis in original.]

### C. Commonly-Used Terms Describing Rape and Sexual Assault

The following subsections delineate and define commonly-used terms used to describe rape and sexual assault.\*

#### 1. Perpetrator(s)/Victim Relationships

##### – Stranger Rape

Stranger rape is a type of rape in which the victim and perpetrator, before the rape, are not known to each other or acquainted in any way.

##### – Acquaintance Rape/Non-stranger Rape\*

Acquaintance or non-stranger rape is a type of rape in which the victim and perpetrator are acquainted with or known to each other. This type of rape excludes intimate partners or spouses. Examples of nonstrangers or acquaintances include people whom the victim may have recently met, friends, coworkers, neighbors, family doctors, therapists, spiritual leaders, business partners, mail carriers, store clerks, etc.

##### – Intimate Partner Rape

Intimate partner rape is a type of acquaintance or non-stranger rape, where the victim and perpetrator are not only known to one another but who are also currently or formerly married, living together, or engaged in a dating relationship.\* Regarding a “dating relationship,” no element of any criminal sexual conduct crime, or other Michigan sex crime, contains the term “dating relationship.” However, in the context of Michigan’s domestic assault and battery crimes, a “dating relationship” means:

“frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.” MCL 750.81a(4).

**Note:** The CSC Act contains a “member of the same household” element. For discussion of this element, see Section 2.5(K).

## 2. Other Circumstances

### – Drug-Facilitated Rape

Drug-facilitated rape can be either stranger or acquaintance/non-stranger rape. It includes circumstances where the perpetrator administers alcohol or controlled substances to the victim to facilitate a sexual assault. For purposes of this definition, it does not matter whether the victim consented to the ingestion or delivery of the alcohol or controlled substance. However, for purposes of Michigan’s drug-facilitated criminal sexual conduct crime, the delivery of such substances must be unconsented by the victim, and the drug-facilitator must be a controlled substance or GBL (gamma-butyrolactone). See MCL 333.7401a and Sections 3.12 and 8.8 for more information on this crime.

### – Child Sexual Abuse

Child sexual abuse can be either stranger or acquaintance/non-stranger rape. It is commonly understood to require a victim who is less than the age of consent. A detailed discussion of child sexual abuse is outside the scope of this Benchbook. For further information on this topic, see the website addresses in this Benchbook’s front matter.

## D. Characteristics of Sexual Assault Crimes

The following subsections discuss common characteristics of rape and sexual assault.

**Note:** The following subsections cite numerous studies on “rape” and “sexual assault.” The reader should be cautioned that the findings and statistics of these studies are dependent, in many circumstances, upon the definitions of rape and sexual assault used in the studies. The variability in defining “rape” and “sexual assault,” as discussed earlier, can cause a variability in the findings and statistics in these rape and sexual assault studies.

### 1. Acquaintance rape is far more common than stranger rape

The overwhelming majority of sex offenders are known to their victims. Seventy five percent (75%) of rape and sexual assault victimizations involve offenders (both single- and multiple-offender situations) who have had a prior relationship with the victim as either a family member, intimate partner, or acquaintance. Greenfeld, *Sex Offenses and Offenders* (Bureau of Justice Statistics, 1997), p 4. The number of stranger and acquaintance rapes and sexual assaults vary, however, according to whether a single or multiple offender was involved. In single-offender rapes and sexual assaults, strangers accounted for nearly 20% of the victimizations (or, in other words, over 80% of the single-

\*However, one study states that between 64% and 96% of all rapes are never reported to criminal justice authorities. Lisak & Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 *Violence and Victims* 1 (2002).

offender rapes are committed by nonstrangers). *Id.* In multiple-offender rapes and sexual assaults, strangers accounted for 76% of the victimizations. *Id.*

## 2. Rape and sexual assault are underreported crimes

According to the Bureau of Justice Statistics, only 32% of sexual assault/rape victims overall reported their crimes to law enforcement. Greenfeld, *supra*, p 2.\* However, in a more recent study involving only female victims, 36% of rapes, 34% of attempted rapes, and 26% of sexual assaults were reported to the police. Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000* (Bureau of Justice Statistics, 2002), p 1. This study also showed that, generally, the closer the relationship between the victim and offender, the greater the likelihood that the rape or sexual assault would not be reported to law enforcement. For instance, when the offender was a current (or former) husband or boyfriend of the female victim, 77% of rapes, 77% of attempted rapes, and 75% of sexual assaults were not reported. *Id.* at 3. When the offender was a friend or acquaintance, 61% of rapes, 71% of attempted rapes, and 82% of sexual assaults were not reported. *Id.* When the offender was a stranger, only 54% of rapes, 44% of attempted rapes, and 34% of sexual assaults were not reported. *Id.*

Although there are many reasons why victims may not report a sexual assault or rape to law enforcement agencies, including fear of retribution, of not being believed, and of the criminal justice system in general, the most common reason given for nonreporting was that it was considered a personal matter. Greenfeld, *supra*. See also Rennison, *supra* (“When victims of rape, attempted rape, and sexual assault did not report the crime to the police, the most often cited reason was that the victimization was a personal matter.”) The most common reason given for reporting the sexual assault or rape was to prevent further crimes by the offender against the victims. Greenfeld, *supra*.

## 3. The overwhelming majority of sexual assaults are perpetrated against women

An estimated 91% of victims of rape and sexual assault are women. *Id.* In single-offender rapes and sexual assaults, the percentage of male offenders is nearly 99%. *Id.* See also Rennison, *supra* at p 1 (94% of rapes, 91% of attempted rapes, and 89% of completed and attempted sexual assaults involved female victims).

## 4. Weapons are not used in a majority of sexual assaults

Eighty four percent (84%) of rape and sexual assault victims reported that no weapon was used by the offender. Greenfeld, *supra* at 3.

## 5. Resistance or self-defense is employed in a majority of sexual assaults and rapes

About 7 of 10 victims reported taking some form of self-protective action during the rape or sexual assault—the most common form of self-protective action was to resist by struggling or to chase and try to hold off the offender. *Id.* at 5. However, among those victims who took self-

protective action, only a little more than half felt that their actions helped the situation. *Id.* And about 20% of the victims who took such action felt that their actions either made the situation worse or simultaneously helped and worsened the situation. *Id.*

**6. Most rapes and sexual assaults occur in the victim's home or within one mile of the victim's home at a friend's, relative's, or neighbor's home**

Nearly 6 of 10 rape and sexual assault victims reported that the incident occurred in their home or within one mile of the home in a friend's, relative's, or neighbor's home. *Id.* at 3.

**7. Most rapes and sexual assaults occur from 6:00 pm to 6:00 am**

About 2/3rds of rapes and sexual assaults occur within a 12-hour timeframe, from 6:00 pm to 6:00 am. *Id.*

### 1.3 Understanding the Perpetrator

This section explores some common characteristics of sex offenders, as well as factors that are often present in cases involving sexual assault.\*

#### A. Characteristics and Typologies of Sex Offenders

No two sex offenders are exactly alike. In fact, one sexual assault expert said that "sex offenders comprise an extremely heterogeneous population that cannot be characterized by single motivational or etiological factors." Schwartz, *The Sex Offender: Corrections, Treatment and Legal Practice* (Civic Research Institute, Vol I, 1995), p 11-2. However, sex offenders often exhibit similar characteristics. As a result, some experts on sex offenders have formed typologies to create a hierarchy of seriousness, and to catalog perpetrator dangerousness and victim impact. One common typology, formed by Dr. A. Nicholas Groth, classifies the act of rape (as opposed to the type of rapist) into three categories, all of which may also be used to describe the motives, behavior, and conduct of the rapist: (1) anger rape; (2) power rape; and (3) sadistic rape. Another common typology, formed by the Federal Bureau of Investigation, classifies rapists into four categories: (1) power-reassurance rapist; (2) assertive rapist; (3) angry-retaliatory rapist; and (4) anger-excitement rapist. *Id.* at 3-28 to 3-29.

**Note:** The reader is cautioned that typologies,\* although a quick and easy reference with condensed information, are not without their drawbacks. For instance, they do not always take into account the personal characteristics of each individual rapist, and they are not usually subjected to validation studies. Moreover, such typologies can cause stereotyping and may often reflect the bias of the originator's professional background. *Id.* at p 3-21 to 3-22.

\*For information on sex offender treatment and recidivism, see Section 9.5(H).

\*For a list and discussion of nine different typologies, see *Id.* at p 3-22 to 3-29.

What follows are some common characteristics of sex offenders.

**1. Sex offenders are overwhelmingly male**

The great majority of sex offenders are male. Nearly 99% of sex offenders in single victim incidents were male. Greenfeld, *Sex Offenses and Offenders* (Bureau of Justice Statistics, 1997), p 2. However, the Federal Bureau of Investigation reported in 1997 that females constituted eight percent of all rape and sexual assault arrests for that year. *Myths and Facts About Sex Offenders* (Center for Sex Offender Management, August 2000), p 4.

**2. Sex offenders typically have access to consensual sex**

The majority of sex offenders have access to consensual sex during the time that they rape or sexually assault their victims. Groth, *Men Who Rape* (Plenum Press, 1979), p 5.

**3. Sex offenders are not typically mentally ill**

The majority of sex offenders are not mentally ill; in fact, as a group, sexual assault perpetrators are no more likely than other felons to be mentally ill. Scully, *Understanding Sexual Violence: A Study of Convicted Rapists* (Unwin Hyman, 1990), p 142-143; Groth, *supra*, p 6.

**4. Most sex offenders were not sexually or physically abused as children**

In one study of 114 convicted rapists, 91% denied experiencing childhood sexual abuse; 66% denied experiencing childhood physical abuse; and 50% admitted to having nonviolent childhoods. Scully, *supra*, p 68-69.

**5. Most sex offenders are recidivists and commit other forms of interpersonal violence**

A recent study of undetected rapists, i.e., those rapists who escaped notice by the criminal justice system, found that a majority of such rapists were recidivists and committed other acts of interpersonal violence, including battery, child sexual abuse, child physical abuse, and sexual assault short of rape or attempted rape. In Lisak & Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 *Violence and Victims* 1 (2002), p 73-84, two sexual assault experts reported on 120 of 1,882 men whose self-reported sexual acts met legal definitions of rape or attempted rape but whose actions went undetected by the criminal justice system.

**Note:** This study was conducted, in part, to address the paucity of studies on undetected rapists. According to the researchers, undetected rapists comprise a large percentage of sex offenders because most rapes (between 64% and 96%) go unreported, and even when the rapes *are* reported, only a small percentage, especially non-stranger rapes, ever result in successful prosecution.



The research findings revealed that of the 120 undetected, self-reported rapists:

- 76 or 63.3% were **recidivists**, and reported committing additional rapes, either against multiple victims or the same victim, averaging 5.8 rapes per person.
- 70 or 58.3% admitted to other acts of **interpersonal violence**, including battery, sexual assault short of rape or attempted rape, child physical abuse, and child sexual abuse. (As these findings reflect, the undetected rapists did not necessarily limit their violence either to the sexual realm or adults.)
- 97 or 80.8% admitted to committing rapes against women who were **intoxicated** because of alcohol or drugs.
- 21 or 17.5% admitted to using **threats or overt force** in **attempted rapes**.
- 11 or 9.2% admitted to using **threats or overt force** to coerce **sexual intercourse**.
- 12 or 10% admitted to using **threats or overt force** to coerce **oral sex**.

Additional aspects of the study involved comparisons of the total number of acts of interpersonal violence committed by the non-rapists, single-act rapists, and repeat rapists. The study found that between single-act and repeat rapists, repeat rapists were responsible for a disproportionate share of the overall violence committed: “More than two-thirds (68.4%) of the repeat rapists admitted to other forms of interpersonal violence, compared to 40.9% of the single-act rapists . . .” *Id.* at 78-79. The 1,754 non-rapists committed a mean of 1.41 acts of violence, while the 44 single-act rapists committed 3.98 acts, and the repeat rapists 13.75. *Id.* at 78. Thus, after the foregoing statistics involving rape and interpersonal violence were taken into account, the researchers concluded that a relatively small proportion of men, the repeat rapists, “committed an average of six rapes and/or attempted rapes and an average of 14 interpersonally violent acts.” *Id.* at 80. “[The repeat rapists’] level of violence was nearly ten times that of non-rapists, and nearly three and a half times that of single-act rapists.” *Id.*

The study also compared the rate of offense between rapists who reported using threats or overt force and those who reported coercing victims incapacitated by alcohol or drugs. Regarding threats or overt force, 23 of 76 (or 30%) repeat rapists used overt force, while 12 of 44 (or 27%) single-act rapists used overt force. Regarding intoxication, 53 of 76 (or 69.7%) repeat offenders used intoxication, while 32 of 44 (72.7%) single-act rapists used intoxication. *Id.*

Significantly, the study found that the data on these 120 undetected rapists underscore the similarities between incarcerated rapists and at least some of the rapists who escape notice of the criminal justice system. *Id.* at 81.

For information on how to obtain a copy of the foregoing study, visit <http://www.springerpub.com> (last visited July 25, 2002).

For information on sex offender treatment and recidivism, see Section 9.5(H).

## 1.4 Understanding the Victim

### A. General Psychological Effects of Crime Victimization

The psychological impact of criminal victimization varies widely. A victim's reaction to and recovery from criminal victimization depends upon the circumstances underlying the offense and the victim's personal characteristics, including his or her support system and psychological history. Resick, *Psychological effects of victimization: Implications for the criminal justice system*, 33 *Crime & Delinquency* 468, 473 (1987).

Initial reactions to crime victimization may include any of the following:\*

- F Shock.
- F Disbelief.
- F Numbness.
- F Disorientation.
- F Anger.
- F Fear.
- F Terror.
- F Confusion.
- F Guilt.
- F Self-blame.

**Note:** Any of the foregoing initial reactions may affect a victim's decision to report, or to delay the report of, the sexual assault to law enforcement authorities.

Victims of violent offenses may experience effects that may persist for months or years. Norris, Kaniasty & Thompson, "The Psychological Consequences of Crime: Findings From a Longitudinal Population-Based Study," in Davis, Lurigio & Skogan, eds, *Victims of Crime* (Thousand Oaks, CA: Sage, 2d ed, 1997), p 161.

Long-term effects may include any of the following:\*

- F Anxiety disorders.
- F Depression.
- F Drug and alcohol abuse.
- F Fear.
- F Flashbacks.

\*See Albrecht, *The Rights and Needs of Victims of Crime: The Judges' Perspective*, 34 *Judges J* 29, 30 (1995).

\*These effects were taken from Weibe, "The Mental Health Implications of Crime Victims' Rights," in Wexler & Winick, eds, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Durham, NC: Carolina Academic Press, 1996), p 215.

- F Lowered self-esteem.
- F Sexual dysfunction.
- F Physical complaints.
- F Suicidal ideation.
- F Suspiciousness.
- F Post-traumatic stress disorder.
- F A sense of social isolation.

## B. Psychological Effects of Sexual Assault Crimes on Victims

Sexual assault victims may suffer consequences far longer and far more extreme than victims of other violent crimes. Acute reactions to sexual assault may last several months. Although some studies have shown some stabilization in the initial reactions three months after a sexual assault, victims may continue to experience related reactions or responses for more than a year.\* In fact, one study indicates that some sexual assault victims have reported sexual assault-related difficulties as much as 13 years after the assault. Riggs, Kilpatrick & Resnick, *Long-Term Psychological Distress Associated With Marital Rape and Aggravated Assault: A Comparison to Other Crime Victims*, 7 *Journal of Family Violence*, 283-296 (1992). Additionally, sexual assault victims comprise the largest percentage of individuals with post-traumatic stress disorder (PTSD). Culbertson & Dehle, *Impact of Sexual Assault as a Function of Perpetrator Type*, 16 *Journal of Interpersonal Violence*, 10 (Sage Publications, 2001), p 992.

After the initial reactions, sexual assault victims commonly experience the following long-term reactions or responses:\*

- F Anger.
- F Shame.
- F Anxiety.
- F Fear.
- F Feelings of vulnerability.
- F Helplessness.
- F Numbness.
- F Nightmares of the sexual assault.
- F Sleep disturbances.
- F Memory disturbances.
- F Mental concentration disturbances.

\*Resick & Nishith, "Sexual Assault," in Davis, Lurigio, & Skogan, eds, *Victims of Crime* (Thousand Oaks, CA: Sage, 2d ed, 1997), p 31.

\*These reactions or responses were taken from Resick & Nishith, *supra*, and Culbertson & Dehle, *supra*.

- F Depression.
- F Low self-esteem.
- F Problems with social adjustment.
- F Problems with sexual functioning (and less satisfaction with current sexual activities).

Sexual assault victims have also reported experiencing the following feelings: a loss of control, an overwhelming terror of death, an intense fear of revictimization, and an invasion of personal boundaries. *Id.* Importantly, a victim's perception of the threat to his or her life posed by the sexual assault has been shown to affect the severity and persistence of psychological trauma. Resick & Nishith, *supra* at 37.

For additional information on the effects of sexual assault on victims, see Appendix D, the Michigan State Police's *Standard Recommended Procedures for the Emergency Treatment of Sexual Assault Victims*.

### C. Recognizing the Traumatic Effects of Court Proceedings

A sexual assault victim's participation in court proceedings can be very stressful. Moreover, testifying in court, especially about such personal and violating circumstances, can be very traumatic. This fear may arise from the proximity of the alleged perpetrator, reactions to testimony and other evidence presented at trial, attacks on the victim's credibility, and a perception that the judge and jury may not believe the victim's testimony. Resick, *Psychological effects of victimization: Implications for the criminal justice system*, 33 Crime & Delinquency 468, 475 (1987). This is especially true of facing the alleged perpetrator. Looking at the defendant, or even preparing to do so, may remind the sexual assault victim of the circumstances underlying the alleged crime and thereby produce psychological trauma. Wiebe, "The Mental Health Implications of Crime Victims' Rights," in Wexler & Winick, eds, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Durham, NC: Carolina Academic Press, 1996), p 216. This traumatic effect may be heightened for a sexual assault victim in a case where the defendant has chosen to represent himself or herself rather than being represented by counsel. In such a case, the encounter with the defendant may be direct: the defendant may choose to cross-examine the victim directly rather than through stand-by counsel. See Section 6.8, for a discussion of self-represented defendants.

Apart from testifying and recounting extraordinarily personal circumstances, a sexual assault victim's participation in court proceedings may involve missing work, rearranging one's daily schedule, waiting for hearings in crowded hallways and courtrooms, and dealing with continuances and delays.

For information on prosecutorial discretion and the non-participating witness, see Section 7.7.

## D. Cross-Cultural Communication

Michigan is home to a diverse population. Its educational, economic, and recreational opportunities continue to attract people of many racial, national, and ethnic backgrounds. This section offers suggestions for effective cross-cultural communication. A non-exhaustive list of resources for sexual assault victims appears in Appendix A.

**Note:** The following text on cross-cultural communication is adapted from a document prepared by the Los Angeles County Commission on Human Relations (January, 2001).

As used in this section, “culture” means group customs, beliefs, social patterns, and characteristics. Nationalities and ethnicities have culture, as do businesses, occupations, generations, genders, and groups of people who have some common distinguishing characteristics or experiences. “Culture” is not always apparent from a person’s appearance. For example, immigrants and third-generation U.S. citizens, city and small-town dwellers, lesbian and gay male people, deaf and hearing persons may all be indistinguishable on sight.

In national and ethnic groups, the components of “culture” include language, non-verbal communication, views on hierarchies (e.g., responsibilities, duties, and privileges of family or group members), interpersonal relationships, time, privacy, touching, and speech patterns. Groups other than nationalities and ethnicities may also have distinctive verbal and nonverbal perceptions and expression, shared values, standards, beliefs, and understandings; for example, language and values usually differ depending on age or occupation.

The following tips are based on observations of successful cross-cultural communicators. None of the behaviors that follow requires a particular personality or talent; the only underlying assumption is that both parties speak the same language.

### Things to Do All of the Time

- F Remember that diversity has many levels and complexities, including cultures, and overlapping cultures. For example, there is great cultural diversity among Spanish-speaking populations in Europe, the Caribbean, Central America, North America, and South America, despite the fact that they share Spanish as a native language.
- F Respect people as individuals without making assumptions, and expect others to be thoughtful, intelligent people of goodwill, deserving of respect. Don’t make judgments based on accent, wordiness or quietness, posture, mannerisms, grammar, or dress; rather, assume that there are good reasons why people do things the way they do.
- F Work to become conscious of your own biases.
- F Be willing to admit what you don’t know.

- F Listen actively and carefully. Careful listening usually means undivided attention. Avoid such things as looking at your watch, looking around to see who else has arrived at the meeting, and avoidable interruptions. Listen not only for factual information, but also for glimpses of the other person's sensibilities and reality. Closely watch reactions. Notice what the other person asks about. It usually indicates not only interest in the subject, but that the subject is not too personal or sensitive to discuss openly. Stop talking when the other person has something to say.
- F Accept responsibility for any misunderstanding that may occur, rather than expecting the other person to bridge cultural differences. This is easy to do by saying something like: "I'm sorry that I didn't make it clear."
- F Notice and remember what people call themselves, e.g., African-American or Black, Hispanic or Chicano, Iranian or Persian, Korean or Asian, and use those terms.
- F Remember that you are an insider to your culture and an outsider to other cultures. Be careful not to impose. Showing off your knowledge of someone else's culture, for example, might be considered intrusive.
- F Look for aspects of the other culture that are admirable. When you identify such a characteristic, you may want to somehow indicate your appreciation of it.

### **Things to Do Much of the Time**

- F Expect to enjoy meeting people with experiences different from yours. This tip is in the "much of the time" section and not in the "all of the time" section, because, although getting to know other cultures is stimulating and gratifying, it can take energy. There are times when each of us seeks out familiar things and people.
- F Be a bit on the formal side at first in language and in behavior. After you get acquainted, you might choose to be more casual. Even then remember to use what have been called the "magic words." "Please," "thank you," and "excuse me," are universally appreciated. Use formal terms of address unless and until the other person indicates a preference for the informal.
- F Be careful about how literally you take things, and how literally your statements might be taken. "Let's have lunch soon" or "Make yourself at home" are two examples of easily misunderstood courtesy phrases.
- F Expect silence as a part of conversation. Silence can mean that the person you're talking to is not interested, or defers to you on the subject, or thinks that the subject is his or her business. Or silence means that she or he is thinking over what you said before answering.
- F If it appears to be appreciated, act as a cultural guide/coach. Explain what the local custom/practice is, e.g., "Some people dress up for the holiday luncheon, but most wear ordinary work clothes."
- F Look for guides/coaches to other cultures, someone who can help you put things in perspective.

### Things to Do Some of the Time

- F Ask questions. Most people appreciate the interest in their culture. Each person can speak for his experience and some will speak in broader terms. Be careful about asking “why,” however. It frequently has a judgmental tone to it, implying that the thing you ask about is not acceptable.
- F When you are asked questions, take care that your answers aren’t too short. Make your answers smoother and gentler than a plain “yes” or “no,” or other short answers. Most cultures are less matter-of-fact than that.
- F Watch cultural groups interacting among themselves; learn what their norms are. Do they urge their views on one another? Do they flatter one another? Do they defer to one another? Do they maintain eye contact? How do they behave toward elders? Children? Women?
- F Open a subject for discussion without putting the other person on the spot. Try thinking aloud about your own experience and your culture. Thinking aloud is one way of interpreting your culture without talking down or assuming that the other person is ignorant. It also makes it safe for him and her to ask questions because you have been the first to reveal yourself.

### Things Successful Communicators Never Do

- F Never make assumptions based on a person’s appearance, name, or group.
- F Never expect people of a population group to all think alike or act alike.
- F Never show amusement or shock at something that is strange to you.
- F Never imply that the established way of doing something is the only way or the best way.

## 1.5 Statewide Agencies That Address Sexual Assault

There is broad consensus that the most effective response to sexual violence, like domestic violence, is a **coordinated community response**, in which the court’s efforts are part of a continuum of services offered by both the justice system and social services communities. Courts best function as part of a coordinated community response when they are aware of the variety of specialized services provided by sexual violence agencies. This section details information about such agencies at the state and local levels.

The Michigan Domestic Violence Prevention and Treatment Board, the Michigan Coalition Against Domestic and Sexual Violence, and the Michigan Resource Center on Domestic and Sexual Violence are organizations operating at the statewide level to address the prevention and treatment of sexual violence from the perspective of victims. These agencies, although

they do not provide direct assistance to victims subjected to sexual violence, provide local referrals, information about sexual violence, training resources, and technical assistance to courts. However, these agencies are not authorized to provide such assistance to sex offenders.

### **A. Michigan Domestic Violence Prevention and Treatment Board**

The Michigan Domestic Violence Prevention and Treatment Board (“MDVPTB”) was created as a department within the Department of Social Services (now the Family Independence Agency) in 1978. Its mission is:

“To lead statewide efforts to eliminate domestic and sexual violence in Michigan.”

Some of the MDVPTB’s activities include\*

- F Coordinating and monitoring programs and services for the prevention and treatment of domestic and sexual violence.
- F Developing standards for the implementation and administration of services and procedures to prevent domestic and sexual violence and to assist its victims.
- F Coordinating statewide efforts to educate justice system and other professionals about domestic and sexual violence.
- F Advising the Legislature and Governor on the nature, magnitude, and priorities of the problem of domestic and sexual violence and the needs of its victims, and recommending changes in state programs, statutes, policies, budgets, and standards that will reduce the problem and improve the condition of victims.

In carrying out the duties listed above, the MDVPTB administers funds to local and statewide agencies. It also provides technical assistance to local entities. The MDVPTB sponsors frequent domestic and sexual violence training events for service providers, police, prosecutors, judicial branch employees, and other professionals who are involved in providing service for individuals experiencing domestic and sexual violence. MDVPTB staff also make presentations at training events sponsored by the professional organizations for these service providers (such as the Michigan Judicial Institute, the Michigan Commission on Law Enforcement Standards, and the Michigan Coalition Against Domestic and Sexual Violence).

The MDVPTB is located at 235 S. Grand Avenue, Suite 506, Lansing, Michigan 48933-1805, telephone 517-335-8144. Its website address is <http://www.michigan.gov/fia> (select “Commissions & Boards” and “Domestic Violence”). (Last visited July 25, 2002).

\*A complete list of the MDVPTB’s powers and duties appears at MCL 400.1504.



## B. Michigan Coalition Against Domestic and Sexual Violence

The Michigan Coalition Against Domestic and Sexual Violence (“MCADSV”) was incorporated as a private non-profit corporation in 1978. It is dedicated to the empowerment of Michigan’s survivors of domestic and sexual violence.

The mission of MCADSV is to develop and promote the efforts aimed at the elimination of all domestic and sexual violence in Michigan. MCADSV is a statewide membership organization whose members represent a network of 70 sexual assault and domestic violence programs and over 100 allied organizations and individuals. The member agencies of MCADSV provide comprehensive emergency and support services to victims of domestic and sexual violence.

MCADSV promotes public awareness and provides leadership, advocacy, training, and technical assistance on issues regarding sexual assault and domestic violence. The organization participates in collaborative efforts to effect social change with local, state, and national organizations. It also provides a forum for the exchange and development of skills and information regarding the community’s response to domestic and sexual violence.

MCADSV researches, compiles, and disseminates current statistics, and produces publications addressing the technical assistance needs of its members. MCADSV’s priority is to support sexual assault and domestic violence prevention and intervention work in communities throughout Michigan.

The goals of MCADSV are to ensure the delivery of quality services to victims of sexual assault and domestic violence. As such, the MCADSV:

- F Provides technical assistance and comprehensive issue-based training services to its members.
- F Advocates for changes in public policy on behalf of victims of sexual assault and domestic violence.
- F Promotes public awareness and acts as a clearinghouse of information on the most current issues relating to sexual assault and domestic violence. Publications and other materials are available at the following addresses.

The MCADSV is located at 3893 Okemos Rd., Suite B-2, Okemos, Michigan 48864, telephone 517-347-7000. Its website address is <http://www.mcadsv.org> (last visited July 25, 2002).

## C. Michigan Resource Center on Domestic and Sexual Violence

The Michigan Resource Center on Domestic and Sexual Violence is a collaboration of the Michigan Domestic Violence Prevention and Treatment

Board (“MDVPTB”) and the Michigan Coalition Against Domestic and Sexual Violence (“MCADSV”). The MDVPTB is the primary financier and owner of the collection, which is housed at the MCADSV. Additional financing is provided by the U.S. Department of Health and Human Services and other supporters of the MCADSV. The collection is comprised of over 3,000 books and 350 videos on domestic and sexual violence. The collection and research services are available for all of Michigan’s citizens to utilize at no charge. Besides distributing materials, the Resource Center is engaged in the following activities:

- F Development and distribution of *Fact Sheets* and *Statistics* on violence against women.
- F Research and technical assistance to Resource Center patrons.
- F Mobile lending library at statewide conferences.
- F Distribution of a quarterly newsletter, *The Source*.
- F Development and distribution of Technical Assistance Packets on a variety of issues related to violence against women.

The Michigan Resource Center on Domestic and Sexual Violence is located at 3893 Okemos Rd., Suite B-2, Okemos, Michigan 48864, telephone 517-381-4863. Its website address is <http://www.mcadsv.org/mrcdsv/index.html> (last visited July 25, 2002).

## 1.6 Community-Based Efforts That Address Sexual Assault

Michigan sexual assault service agencies provide victims of sexual assault with help and support in surviving sexual assault.\* They typically base their approach on a philosophy of self-determination and empowerment, providing information and advocacy, but also encouraging sexual assault victims to make their own decisions and enhance their own support systems to help them get past the sexual assault. Empowerment philosophy posits that healing occurs when sexual assault victims realize that they can decide what is best for themselves, that they are not alone, and that they are not to blame for the sexual assault. It further assumes that healing can happen when sexual assault victims reach out and provide support to other sexual assault victims. Empowerment philosophy intends to counteract the helplessness and immobility that often accompanies a life crisis and to put the possibility and authority for ongoing change into the hands of the sexual assault victim. By encouraging a sexual assault victim to look inward and assess his or her own needs and the resources possessed to fulfill them, a sense of autonomy can be restored.

\*A non-exhaustive list of local sexual assault service agencies appears in Appendix A.

Sexual assault service agencies provide shelter, as well as many other forms of assistance to victims of sexual assaults. The types of services provided are not uniform statewide. However, some common services are as follows:

- F 24-hour telephone crisis lines.
- F Individual and group counseling.
- F Transportation assistance.
- F Safety planning.
- F Childcare services.
- F Information and education about sexual violence.
- F Assistance in finding temporary or permanent housing, if needed.
- F Assistance to victim's family members and friends.
- F Assistance and advocacy with social service agencies.
- F Assistance and advocacy with medical and other health care.
- F Assistance and advocacy with the legal system.

### A. Sexual Assault Response Teams

Sexual assault is of such complexity that no single community institution acting in isolation can provide an adequate response. Accordingly, some local courts participate in community efforts that strive to achieve a coordinated response to sexual assault. One such community effort is known as a Sexual Assault Response Team or SART. A SART is:

“a community approach to provide compassionate and innovative care to sexual assault [victims]. . . . The SART usually consists of the SANE,\* an advocate from a local rape crisis center or women's resource center, and a law enforcement officer. Prosecutors can also be a part of the SART. Although they are not involved in the initial contact with the victim, their participation is vital to the success of a SANE/SART program. Often all team members (except prosecutors) are present during the law enforcement's interview of the victim. Each member of the SART has a specific role in the response and also works closely with the other team members.”  
 Lang, *Sexual Assault Nurse Examiner Resource Guide for Michigan Communities*, Michigan Coalition Against Domestic and Sexual Violence (1999), p 12.

\*A SANE is a Sexual Assault Nurse Examiner. For information on SANEs, see Section 8.7(B).

The Center for Sex Offender Management described SART services as follows:

- F To provide support to sexual assault victims, along with information regarding sexual assault, the criminal justice system, and available community resources.

\*SANEs also go by different titles, such as Forensic Nurse Examiners (FNEs). See Section 8.7(B) for more information on SANEs generally.

- F To ensure that appropriate medical care and forensic examinations are provided to sexual assault victims.
- F To facilitate information gathering and evidence collection. *Supporting the Development of Multidisciplinary Teams to Coordinate Community Responses to Sexual Assault*, 5 Sexual Assault Report 2, 18 (November/December 2001).

The roles of SART members who respond to scenes of sexual assault (or hospitals or police stations) are as follows:

**F Sexual Assault Nurse Examiner (SANE)\***

- To screen and examine the victim for injuries, and, if needed, refer the victim to a physician for care.
- To document the size, shape, color, and location of all injuries.
- To obtain brief (not detailed) synopsis of facts surrounding alleged sexual assault to guide in evidence collection.
- To obtain consent from the victim to do the forensic examination and to release the evidence to police.
- To report the alleged sexual assault to police, if applicable. MCL 750.411 imposes a legal duty upon every person, firm, or corporation managing or in charge of a hospital or pharmacy to immediately report to the head of the applicable police department, by telephone and in writing, the name, residence, whereabouts, and character and extent of the injuries of any person suffering from any wound or other injury inflicted by means of a knife, gun, pistol or other deadly weapon, or by other means of violence. See Section 7.15(D) for more information on MCL 750.411's reporting requirements.
- To conduct forensic evidence collection. The Michigan State Police has a standardized sexual assault evidence collection kit. See Appendix D and Section 8.7(A) for more information on sexual assault evidence collection kits.
- To treat the victim for any sexually transmitted diseases, and to provide information regarding STDs and HIV.
- To provide emergency contraception to the victim.
- To testify in court.

**F Victim Advocate**

- Provide emotional support, short-term crisis intervention, and advocacy for sexual assault victims during their involvement with medical and legal systems. This may include, in some circumstances, the ability to engage in privileged communications with the victim.
- Victim advocates are generally classified as two types: (1) prosecution-based; and (2) community-based. Advocates of the

former work in and for prosecutor (or city attorney) offices; advocates of the latter work in and for private organizations such as sexual assault crisis centers, etc. Important differences exist regarding the confidentiality of communications made between a victim and a prosecution-based victim advocate, and between a victim and a community-based victim advocate. Communications made in the latter relationship may be statutorily privileged, but they are not if made in the former relationship. For more information on this statutory communication privilege, see Section 7.15(A). For information on a prosecutor's duty to disclose notes, witness statements, and other discoverable material, see Section 5.14(B).

#### **F Law Enforcement Officer**

- Work to ensure safety of victim.
- Conduct investigation of the sexual assault.
- Attempt to identify and apprehend the perpetrator.
- Prepare police report and forward to prosecutor's office. Lang, *supra*, p 9-13.

Although some believe that SARTs are comprised only of "First Responders," i.e., individuals who first respond to scenes of sexual assault or to places where victims may be located, such as at hospitals or police stations, SARTs often include additional activities. According to the Center for Sex Offender Management:

"SART activities often extend beyond the scope of immediate responses to the assault. For example victim advocates may continue to work with law enforcement and prosecution to support victims and help prepare them for court proceedings; law enforcement and SANE nurses typically testify in court for the prosecution.

"Similarly, multidisciplinary investigative teams may bring together representatives from county law enforcement agencies, child protection services, advocacy programs, and medical facilities to enhance sexual assault investigations and ultimately aid prosecution. By coordinating interventions, evidence collection efforts can be maximized, a single victim interview can be conducted, and a range of victim and family services can be offered." *Id. Supporting the Development of Multidisciplinary Teams to Coordinate Community Responses to Sexual Assault*, 5 Sexual Assault Report 2 (November/December 2001), p 18.

As described above, a SART is similar in nature to domestic violence community coordinating councils that meet on a regular basis to disseminate information, discuss issues of concern, and develop protocols to more effectively respond to criminal violence. The time, location, and manner in which SARTs meet as councils or respond to crime scenes is typically agreed upon by each SART's members and then later formalized into protocols.

For more information on SARTs generally, see Lang, *Sexual Assault Nurse Examiner Resource Guide*, (Michigan Coalition Against Domestic and

Sexual Violence, 1999), or visit the Office for Victims of Crime SANE-SART website at <http://www.sane-sart.com> (last visited July 25, 2002), or the Office for Victims of Crime homepage at <http://www.ojp.usdoj.gov/ovc> (last visited July 25, 2002).